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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,080	04/13/2004	Brian Andrew Kendall	PAWO122425	3159

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EXAMINER	
HELVEY, PETER N.	

ART UNIT	PAPER NUMBER
3782	

NOTIFICATION DATE	DELIVERY MODE
02/22/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No.	Applicant(s)	
	10/823,080	KENDALL ET AL.	
	Examiner	Art Unit	
	PETER HELVEY	3782	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *1/24/2011*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,2,6-8,10,11,14,28-30,32-36,38-41,43-48 and 50-55* is/are pending in the application.

4a) Of the above claim(s) *45* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,6-8,10,11,14,28-30,32-36,38-41,43, 44, 46-48 and 50-55* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

1. Claims 1, 2, 6-8, 10, 11, 14, 28-30, 32-36, 38, 43, 46-48 and 50-55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makowka (US 4,834,552) in view of Hovland (US 3,265,287) and Stude (US 5,738,274). Makowka discloses an envelope (Fig 2) defining a cavity and having a flap closure with an adhesive closure (28, 30), formed from a plurality of multilayer co-extruded polyethylene film (Col 4, lines 1-7) one film being translucent and another being opaque (Col 4, lines 18-21), these being synthetic materials. Makowka does not disclose a tearable closure for the envelope having at least two rows non-perforating perforations, wherein when the flap is in the closed position the first side (having the perforations) is an inner side. Makowka also does not specifically disclose two three layer co-extruded polyethylene films.

Hovland discloses a similar container having a tearable adhesive closure flap (29, 26, 25) with perforations (2) in an outer layer but not an inner layer in order to provide tamperproof opening means which maintains the freshness of the articles held within. It would have been obvious to one of ordinary skill in the art at the time of invention to create the envelope of Makowka with the non-penetrating perforation

closure flap of Hovland in order to provide tamperproof opening means to the envelope of Makowka.

While Hovland teaches the perforations to be on the outside of the flap and the continuous side to be on the inside of the flap, it would have been obvious to one having ordinary skill in the art at the time the invention was made to put the perforations on the inside of the flap in order to provide a smooth outer surface. It has been held that a mere reversal of the essential working parts of a device involves only routine skill in the art. *In re Einstein*, 8 USPQ 167.

Additionally, the examiner maintains it would have been obvious to one having ordinary skill in the art at the time the invention was made to create the envelope out of two three layer co-extruded polyethylene films in order to provide a stronger package. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Makowka as modified above discloses all the limitations of the claims except for there being more than two parallel rows of perforations along an edge of the container from end to end of the flap and a pair of nick ends within the boundaries of the rows that extend at least partially between at least two rows or lines, and intersect at least one row or line. Stude discloses an envelope (Fig 1) having three rows of perforations (99, 101, 102) along the edge of the flap with nick ends (105, 106, 107) within the rows that extend at least partially between at least two rows or lines (Stude notches or nick ends extend at least half the width of the notch towards the next row meting the scope of at

least partially) and intersect at leas one row or line (each Stude notch intersects a row or line) in order to provide an easy to use openable closure for an envelope that allows re-mailing of the envelope. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the envelope of Makowka as modified above with three rows of perforations from end to end along the flap and a pair of nick ends in order to provide an easy to use openable closure that permits re-mailing (Stude; throughout).

In regards to claim 46, the envelope of Makowka reads on the claimed limitation of "bag".

In regards to claim 47, Makowka discloses the flap being of either a continuous film of homogeneous composition, or alternatively being two polymer films bonded together. Furthermore, the line of perforations as taught by Hovland could be seen as the "score lines" that extend through a portion of the thickness, insofar as applicant's claims define score lines.

In regards to claim 50, the nicks are at a 180 degree angle to the rows of areas of reduced thickness.

In regards to claims 51-55, the tear initiating portion is formed from a plurality of nicks which in turn create a tab (See Stude(US 5,738,274) 105, 106, 107).

2. Claim 41 is rejected under 35 U.S.C. 103(a) as being unpatentable over Makowka (US 4,834,552) in view of Hovland (US 3,265,287) and Stude(US 5,738,274) as applied to claim 1 above, and further in view of Jacob (US 4,607,749). Makowka as modified above discloses all the limitations of the claims except for a plurality of score

lines from lengths end to lengths end of the flap, instead disclosing perforations. Jacob discloses an envelope which is openable using score lines (24) instead of perforations, in order to provide an openable closure (Col 2, lines 27-29) by tearing the envelope in a controlled manner. Therefore it would have been obvious to one of ordinary skill in the art at the time of invention to create the envelope of Makowka as modified above with the score lines of Jacob in order to open the envelope by tearing in a controlled manner.

3. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Makowka (US 4,834,552) in view of Hovland (US 3,265,287) and Stude(US 5,738,274) and applicant admitted prior art (unchallenged Offical Notice of previous action).

The examiner previously took official notice that it is well known in the art to provide a cover strip for adhesive closures in order to prevent the adhesive from prematurely attaching. By not challenging this Official Notice, applicant constructively admits it would have been obvious to one of ordinary skill in the art at the time of invention to create the envelope adhesive of Makowka with a cover strip in order to prevent premature adhesion.

Response to Arguments

4. Applicant's arguments filed 1/24/2011 have been fully considered but they are not persuasive.

The examiner recognizes applicant's attempt to traverse the current rejection with the newly submitted claim amendments and obviousness

arguments as discussed in the prior interview, however the examiner is not persuaded for the following reasons:

First regarding the amendment further defining the nick ends, the examiner refers to the interpretation presented in the rejections above and notes that the breadth of applicant's claim language allows such application based on the broadest reasonable interpretation of the claim language.

Next, applicant now argues against the general reversal of parts obviousness application applied by the original examiner and maintained since the 1/23/2009 non-final office action, essentially arguing that one of ordinary skill in the art would not have made the reversal based on the knowledge as represented by the applied art. The examiner recognizes that obviousness may be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988), *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992), and *KSR International Co. v. Teleflex, Inc.*, 550 U.S. 398, 82 USPQ2d 1385 (2007). In this case, the examiner considers the reversal of the perforation penetration arrangement taught by Hovland to have been well within the level of ordinary skill in the art at the time the invention was made. The examiner presents newly cited, but unapplied, prior art demonstrating the known desirability of providing interior rather than exterior perforations. As applicant's

structure is substantially taught by the combination above except for the reversal of the orientation of the layers, and based on the level of knowledge of one of ordinary skill in the art at the time the invention was made, the examiner is not persuaded and maintains the rejection.

For the reasons stated above, as well as those in the rejections above, the examiner is not persuaded by applicant's arguments and amendments and the rejections are maintained.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PETER HELVEY whose telephone number is (571)270-1423. The examiner can normally be reached on M-Th 8:00 - 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/P. H./
Examiner, Art Unit 3782
February 7, 2011

/Justin M Larson/
Primary Examiner, Art Unit 3782
2/13/11